



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE COUNTY: and MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 93	:	
	:	
Complainant	:	
	:	CASE NO. A-0566
v.	:	
	:	DECISION NO. 92-65
TOWN OF WINDHAM	:	
	:	
Respondent	:	

APPEARANCES

Representing AFSCME, Council 93:

Harriet Spencer, Staff Representative

Representing Town of Windham:

Gary W. Wulf, Chief Negotiator

Also appearing:

Willard Wallace, Fire Department
J. D. Weed, Fire Department
David Sullivan, Town of Windham

BACKGROUND

On January 21, 1992 Council 93, the American Federation of State, County and Municipal Employees filed a petition for certification for the following employees of the Town of Windham: secretaries (4), deputy town clerk (1), deputy tax collector (1), clerk assistants (2), transfer station attendants (4), building inspector (1), deputy fire chief (1) and custodian (1). That petition also specifically excluded the positions of police chief, fire chief, code enforcement officer, disposal site manager, town administrator, assessor and selectmen's secretary. By filing of January 29, 1992, the Town's labor relations consultant, Gary W. Wulf, objected to the inclusion of the position of Deputy Fire

Chief as a member of the proposed bargaining unit. The parties were not able to come to an agreement about this position; therefore, this matter was scheduled for and heard before the Board on March 26, 1992.

The town objects to the inclusion of the deputy fire chief position on four grounds: (1) his conditions of employment are different than other employees petitioned for, (2) there is no history of collective negotiations, (3) his craft or profession is different than other employees petitioned for, and (4) he exercises supervisory authority over another individual (a secretary) in the proposed unit and therefore is excluded under the provisions of RSA 273-A:8 II. The union refuted these contentions by offering testimony from the deputy chief.

The deputy chief testified that he has actual command over fire fighters and members of the fire fighters bargaining unit; however, he exercises no command authority over the secretary in question. He claims he no longer does her evaluations, notwithstanding the fact that he continues to evaluate fire fighters. The departmental secretary no longer shares office space with the deputy chief. The training and operations duties of the deputy chief have nothing to do with or no impact on other employees in this petitioned-for bargaining unit. Deputy chief acknowledged that he served on the bargaining team for the town in years past; however, that involvement was limited to departmental employees in another bargaining unit. In that capacity, the deputy chief had, at that time, access to information relative to funds available for settlement with non-union employees. The deputy chief has since been removed from that bargaining team at the initiative of the chief. Presently, the deputy chief's only involvement with the budget process relates to training funds.

The Town Administrator testified that the deputy chief's position was specifically exempted from the fire fighters' unit established in 1989. That position is for an annual, salaried employee unlike all other employees in the proposed bargaining unit. The next higher pay grade (pay grade 22) is that which is awarded to department heads. The next lower pay grade, that assigned to the building inspector (pay grade 20), is uncontested relative to its inclusion in the proposed bargaining unit. The town claims that pay grades 21 and higher represent management positions. The deputy chief should be considered a white collar and professional employee as opposed to the other employees in the proposed bargaining unit who should be considered support staff, laborers and clerical employees.

The fire chief testified that the deputy chief is the only uniformed employee in the proposed bargaining unit. He authors standard operating procedures and directives to subordinate personnel on behalf of the chief, those subordinate personnel being

in the fire fighters' unit and unrelated to the unit under consideration in these proceedings. The chief is the sole creator and approval authority for matters of policy; however, he does delegate initial drafting and composition to the deputy chief and then reviews and/or approves his work product. The fire chief and the deputy chief can discipline or suspend (with pay) departmental employees in the fire department, including the secretary in question. With the exception of that secretary, this authority extends only to employees within the fire department itself. Unlike other employees in the proposed bargaining unit, the chief claims that the deputy chief has no set hours, is responsible for being available twenty-four (24) hours a day, and carries two paging devices. The deputy fire chief last evaluated the secretary in question on May 10, 1990. The chief evaluated that employee on May 14, 1991, because the deputy was on vacation when that evaluation became due.

FINDINGS OF FACT

1. Not at issue or contested in these proceedings are the positions of secretaries, pay grade nine (4), deputy town clerk, pay grade eleven (1), deputy tax collector, pay grade eleven (1), clerk assistants, pay grade nine (2), custodian, pay grade eight (1), transfer station attendants, pay grade eleven (4), and building inspector, pay grade twenty (1).
2. The deputy fire chief works for the chief and in his stead; he does not work for or speak on behalf of the department itself except when authorized to do so by the chief. Likewise, the deputy chief creates standards, policies and procedures all of which are finalized only after approval by the chief. The deputy chief's command authority extends to the fire department bargaining unit and does not extend to the proposed unit under consideration herein.
3. The relationship of the deputy chief to the departmental secretary involves the delegation of secretarial work for her to accomplish. There is no evidence that the deputy chief exercises daily or routine supervision over the departmental secretary.
4. Deputy chief has not evaluated the departmental secretary since 1990. The chief evaluated the departmental secretary in 1991 due to

the absence of the deputy chief. The deputy chief is not the only person authorized to evaluate the departmental secretary.

DECISION AND ORDER

The deputy chief's contact with the departmental secretary is intermittent. It does not appear to be a routine or indispensable function that he evaluate her since, in his absence, this function was accomplished by the chief rather than waiting for the deputy chief to return. Likewise, there appears to be no ongoing or indispensable need for the deputy chief to participate as a representative on the management negotiating team relative to departmental employees in another bargaining unit since he has since been relieved of that responsibility by the Chief. There is no history of collective negotiations for this particular unit in as much as the pending petition represents an attempt to establish a new unit. Given these circumstances, the deputy chief's relationship to the departmental secretary does not reflect the degree of "exercising supervisory authority involving the significant exercise discretion" over that secretary such as to warrant exclusion under the provisions of RSA 273-A:8 II. Additionally, while management has alleged that the deputy chief's conditions of employment as well as his craft or profession are different from other employees in the petitioned-for bargaining unit, the same would be true of other positions, too. For example, the building inspector's conditions of employment and/or job functions would be different than those of other employees in the proposed bargaining unit. Under these circumstances, we cannot conclude that this difference is sufficient to warrant the exclusion of the deputy chief from the proposed bargaining unit. Finally, when we look to other decisions rendered by this Board, we find that it is not uncommon for deputy fire chiefs to be placed in bargaining units with other unrelated job titles, for example Hudson Professional Mgt. Assoc. (Decision No. 91-28, May 16, 1991) and Durham Professional Municipal Mgrs. Association (Decision No. 91-78, October 3, 1991).

We direct a bargaining unit consisting of:

Secretaries (4), deputy town clerk (1), deputy tax collector (1), clerk assistants (2), transfer station attendants (4), building inspector (1), deputy fire chief (1) and custodian (1).

Excluded by decision or agreement:

Police chief (1), fire chief (1), code enforcement officer (1), disposal site

manager (1), town administrator (1),
assessor (1) and selectmen's secretary
(1).

An election should be held by PELRB in accordance with RSA
273-A:10 and PELRB Rules and Regulations as expeditiously as
possible.

So ordered.

Signed this 9th day of April, 1992.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members E.
Vincent Hall and Seymour Osman present and voting.